IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 43 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

INDRASINH GOVINDSINH CHUHAN

Appearance:
MR ND GOHIL, APP. for Appellant.
MR YF MEHTA FOR MR JF MEHTA for Respondent.

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 22/12/2000

CAV JUDGEMENT

1. This is an appeal filed by the State of Gujarat against Indrasinh Govindsinh Chauhan, the original accused in Criminal Case No.1745 of 1987 seeking enhancement of sentence passed by the learned

Metropolitan Magistrate, Court No.7, Ahmedabad on 30.11.1989 for the offences under sections 304A and 279 of the Indian Penal Code read with sections 112 and 116 of the Motor Vehicles Act.

2. The undisputed facts as available from the record are that the offence has taken place on 24.05.1987. The accused - respondent has been charged with rash and negligent driving of truck tanker G.R.R.3435 on the day of the accident and it is stated that while he was proceeding from Jashodanagar towards Vatva G.I.D.C., near Trikampura Patia at around 7.00 a.m. in the morning, he knocked down deceased cyclist one Kanubhai @ Vachharsing Gemabhai Galaiya and caused his death by causing such injuries which were fatal. Though the accused denied to have committed any offence, the Trial Court has come to the conclusion that the prosecution has been able to prove the case against the accused and hence the accused has been sentenced to simple imprisonment for ten days and a fine of Rs.500/-, and in default of paying the amount of fine, further five days simple imprisonment was imposed.

3. As stated above, the State has come in appeal under section 397 of the Code of Criminal Procedure for enhancement of the above sentence passed by the Trial Court on 30.11.1989. The learned A.P.P. on behalf of the appellant has stated that the negligence of the accused has been proved beyond any doubt. The Trial Court after appreciating the evidence and deposition on record had come to the conclusion that not only the deceased cyclist had not contributed in any manner to the causing of the accident but it was the accused alone who was responsible for causing the fatal injuries in view of the rash and negligent act committed by him by driving heavy vehicle in such a manner so as to endanger the life of a person on the road. According to the appellant, therefore, there was no case of any leniency as shown by the Trial Court and this was more so because even on behalf of the respondent-accused, when a question was put to him regarding sentence to be imposed, no mitigating circumstances were shown to exist so as to impose the lesser sentence. That provisions of section 304A of the I.P.C. provide a maximum sentence of two years imprisonment of either description or a fine or with both. It is further stated that even the provisions of section 279 of the I.P.C. permit imprisonment of either description for a term which may extend to six months or with fine which may extend to Rs.1,000/- or with both. Therefore, according to the appellant, the sentence imposed by the Trial Court was grossly inadequate and

insufficient taking into consideration the gravity of the offence which has been proved beyond doubt causing loss of precious human life.

4. As against this, the learned Counsel for the respondent accused has stated that though it is correct that the offence of rash and negligent driving on the part of the accused has been proved taking into consideration the evidence of the witnesses as available on record, there is no case for any interference in the sentence imposed on the accused at this length of time.

5. I have given careful thought to the contentions advanced by both the sides and I feel that the sentence imposed by the Trial Court is grossly inadequate in the facts and circumstances of the present case. The Trial Court ought to have borne in mind that awarding of inadequate punishment does not advance the object and the intention of the legislature which has provided for the punishment in sections 304A and 279 of the Indian Penal Code. As can be seen from the impugned judgment and order, the Trial Court has not even cared to assign any reason so as to warrant or justify taking a lenient view of the matter. Whenever a discretion is granted by the legislature, the Court must always assign reasons for exercise or non-exercise of discretion in a particular manner. In absence of such reasons, it becomes difficult for an appellate forum to justify the ultimate conclusion of the Trial Court, especially, when it has found the offence to be proved against the accused.

6. In the present case, I have carefully gone through the records and proceedings and I have found nothing in the evidence to show that there were any mitigating circumstances; but on the contrary, there are certain factors which have been ignored by the Trial Court while awarding the sentence. In the panchnama, it is stated that "on the tar road there are no marks showing that brakes were applied"; it is further stated that "the tanker was got started from the driver Indrasing and it is found to be in working condition and the brakes were checked and they are found to be functional and proper". One eye witness Chhatrasing Mansing has stated that one tanker came from the rear and knocked down Kanubhai on the front left hand side and the front wheel of the left hand side ran over Kanubhai and the tanker came to a halt after about 10 to 11 feet further. I am not going into any other depositions and evidence in detail in view of the fact that the offence has already been proved to have been committed by the accused-respondent. The aforesaid factors are only

illustrative in nature.

7. It is pertinent to note that the accused respondent has not preferred any appeal challenging the verdict of the Trial Court; and therefore, not only the prosecution has proved beyond doubt that only the accused had committed the offence charged with, but the accused also accepted this part of the finding of the Trial Court. In light of this fact situation, I feel that the sentence imposed by the Trial Court should be enhanced.

8. In the result, the appeal is allowed and the sentence imposed by the Trial Court is enhanced to the extent that the accused shall undergo simple imprisonment for a period of one year and pay a fine of Rs.1,000/-, and in case the fine is not paid, he shall undergo a further simple imprisonment for a period of one month more. The aforesaid period of imprisonment and fine shall take into consideration the imprisonment and the fine as already sentenced and the accused shall undergo the balance period of imprisonment and the balance amount of fine shall be recovered from him. Records and Proceedings be returned.

Sd/-
(D.A.Mehta, J)

m.m.bhatt